Government
Publications

ONTARIO

ONTARIO MUNICIPAL BOARD
123 Edward Street
Toronto 1

66th ANNUAL REPORT

of

THE ONTARIO MUNICIPAL BOARD

Upon the Affairs of the Board

During the Year Ended

December 31, 1971

TO: THE HONOURABLE THE ATTORNEY GENERAL

Pursuant to Section 100 of
The Ontario Municipal Board Act
R.S.O. 1970, Chapter 323

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ONTARIO

ONTARIO MUNICIPAL BOARD

PART I

NATURE AND SCOPE OF THIS REPORT

Although reporting on the operation of the Board during the calendar year 1971 it is now made under Section 100 of The Ontario Municipal Board Act as amended by Bill 27 at the 1972 Session and which now reads as follows:

> "100. The Board shall, after the close of
> "each calendar year, make an annual report
> "upon the affairs of the Board to the
> "Attorney General who shall submit the
> "report to the Lieutenant Governor in Council
> "and shall then lay the report before the
> "Assembly if it is in session or, if not,
> "at the next ensuing session."

Frequently it is suggested that this report should in effect review the "state of the province" at least in so far as municipalities are concerned. This is possibly because of the Board's wide ranging jurisdiction and the image created by daily reports of its work and decisions in the public press.

If this were the purpose and function of this report then obviously it would undergo basic changes from year to year.

But it will be noted that the report required by statute is on "the affairs of the Board", which means the work of the Board. Since the Board's jurisdiction varies very little, if at all, from year to year then its work does not vary greatly and the annual report must be expected to follow the same format.

This Board acts not as an agency of government but as a tribunal. There is a great similarity in the nature of the applications it decides from year to year. Hence the great similarity in the form of its reports from year to year.

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PART II

ESTABLISHMENT AND OPERATION

This Board is what is known in our jurisprudence as a statutory board or statutory tribunal.

Montesquieu's suggested division of government in Legislative, Executive and Judicial Branches seems particularly appropriate in the case of a responsible government (an executive responsible to the Legislature) such as we have in Ontario.

The Judicial branch is the courts. While in a sense they are statutory tribunals since they are created by statute, they are not statutory in the sense that they derive their power from a statute. Their power is derived under a constitution and this includes an inherent power to administer justice. It is their duty to make findings and apply the law.

Statutory tribunals, as distinct from the courts, are an arm of the Executive branch of government in Montesquieu's division. Statutory tribunals derive all their power under some one statute or several statutes. If the power sought to be exercised is not to be found in a statute then the tribunal does not possess that power.

Statutory tribunals can be judicial or administrative. This distinction has the authority of a judgment in the Court of Appeal (Ontario) Re Ashby, 1934 O.R. at Page 421. In that judgment the Court declared the difference to be that a judicial tribunal hears evidence, makes findings and applies the law, while an administrative tribunal hears evidence, makes findings and applies policy. The Board endeavours to avoid use of the term "quasi-judicial" since this tends to blur some of the basic principles.

In hearing assessment appeals the Board acts as a judicial tribunal. In all other matters in which it now has jurisdiction it acts as an administrative tribunal.

The Board is established and exists under authority of The Ontario Municipal Board Act, R.S.O. 1970, Chapter 323, as amended. Much of the jurisdiction is created or vested by that statute itself, but many other duties are reposed in the Board by other statutes, notably The Municipal Act, The Planning Act, the School Acts, The Highway Improvement Act and The Assessment Act.

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PART III

MEMBERSHIP AND ORGANIZATION

The membership and organization of the Board during the period covered by this report was as follows:

J. A. KENNEDY, Q.C. (Appointed October 1st, 1956)	Chairman
A. H. ARRELL, Q.C. (Appointed June 30th, 1961)	Vice-Chairman
H. E. ROBERTS (Appointed June 30th, 1961)	Vice-Chairman
D. JAMIESON (Appointed December 1st, 1955)	Vice-Chairman
W. SHUB, Q.C. (Appointed June 1st, 1963)	Vice-Chairman
R. M. McGUIRE (Appointed November 1st, 1963)	Vice-Chairman
A. L. McCRAE (Appointed December 1st, 1958)	Member
F. G. BLAKE (Appointed November 15th, 1962)	Member
W. T. SHRIVES (Appointed October 18th, 1965)	Member
W. H. J. THOMPSON, Q.C. (Appointed July 1st, 1966)	Member
B. E. SMITH (Appointed August 1st, 1968)	Member
ALAN VAN EVERY, Q.C. (Appointed September 3rd, 1968)	Member
D. S. COLBOURNE (Appointed September 3rd, 1968)	Member
S.S. SPEIGEL (Appointed May 4th, 1970)	Member
H. H. LANCASTER (Appointed September 7th, 1970)	Member

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K. C. ANDREWS (Appointed September 14th, 1971)	Secretary

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All Board Members and staff are engaged full-time. The Board's Chambers are located at 123 Edward Street, Toronto 101. Enquiry - Sixth Floor.

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PART IV

JURISDICTION AND FUNCTIONS

The jurisdiction and function of this Board are a part of what is known as the administrative process. As noted earlier, the Board is not a department of government but a tribunal exercising a wide variety of jurisdiction with respect to municipalities, a great part of which was exercised at one time by the Executive Council of the Province or by the Legislature.

Of course, the rules of natural justice apply to all applications made to the Board. In the case of capital expenditure applications, unless the whole cost is to be paid out of the general rate, notice is required to those sought to be charged with a special rate. In some other cases, such as applications to dispense with a vote of the electors, notice is required by statute. When objections are made a hearing is always held.

The administration of justice could be said to be divided between the judicial arm of government (the courts) and the executive arm of which latter this Board is a branch. The courts operate under strict rules and interpret and follow statutes and precedent. Administrative boards, such as this Board, administer what is sometimes called discretionary justice, having a minimum of rules and a wide spectrum of discretion.

The Board requires notice of applications for approval of land use control by-laws passed under authority of The Planning Act to be given to owners especially affected and if the number is too great for individual notice, by publication. If objection is made a hearing is held.

In matters of law and jurisdiction there is an appeal from the Board to the Court of Appeal and on all matters there is an appeal to the Lieutenant Governor in Council.

The extent and nature of the jurisdiction of the Board could be described as responsibility for the sound growth and development of municipalities within the framework of the statutes with particular regard to economic stability.

Part V of this report deals with this responsibility.

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PART V

GROWTH AND ECONOMIC STABILITY OF MUNICIPALITIES

For the purpose of clarity in this report and for convenience the Board's jurisdiction in this part can be divided under the following headings:

1: Constitution, Boundary Revision and Dissolution of Municipalities

2: Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof

3: Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision

4: Assessment Appeals

SECTION 1

Constitution, Boundary Revision and Dissolution of Municipalities

Given in Schedule "A" to this report is a list of fifteen annexations ordered by the Board during the year as well as two amalgamations, one erection of a town and a redivision into wards in the City of Kingston.

SECTION 2

Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof

For a number of years past the Board has required every municipality seeking approval of any capital expenditure to file with the Board a completed questionnaire giving information in some detail as to the assessment and capital debt of the municipality. This information is required and used in assessing the ability of the municipality to incur new capital debt.

In a number of municipalities, which include all cities, a substantial number of towns and villages and a number of townships, the Board requires to be filed a five-year forecast showing the estimate made by the Council of the capital needs for the whole or part of the cost of which the municipality

expects to be called on to issue debentures or undertake other long term debt in each of the five years. This forecast is studied in the light of the financial position of the municipality and if the forecast for the current year is found to be within the financial competence of the municipality and otherwise acceptable, a quota is established for the municipality against which are charged all applications for expenditure made during the year. This avoids the necessity of examining the capital position of the municipality at the time of each new application during the year.

The year 1971 was the third year under the legislation creating larger boards of education, usually of county or district size, and giving to those boards, except in Metropolitan Toronto, the power to issue their own debentures for the cost of capital works.

This change, effective originally in 1969, entailed an enormous amount of additional work for this Board since it made necessary completely new methods of processing applications and distributing debt incurred for school purposes. Complications engendered by these new procedures were to be expected but did not descend with their full force until the second year, 1970. The experience gained (perhaps suffered would be more descriptive) led to a basic revision of procedures in 1971. These consisted in obtaining statistics on school debt from the Finance Branch of the Department of Municipal Affairs and forecasts of new applications and capital needs from the Department of Education.

There was some hesitation in obtaining this data in this way rather than from the local level but frustrating experience in 1970 made it mandatory in the public interest that this new means be employed. The result was well rewarding, indeed salutary. This method has been continued with some modifications in 1972.

The following table shows the number of new capital expenditure applications received and the total amount approved in each of the last five years:

Year	Number	Amount $
1967	2,869	608,595,545.48
1968	2,841	703,939,055.03
1969	2,456	666,407,390.00
1970	2,425	652,300,476.89
1971	2,523	509,516,535.93

SECTION 3

Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision

This jurisdiction is conferred under The Planning Act.

The duties of this nature conferred on the Board are perhaps unique in any democratic jurisdiction. The power to approve official plans, official plan amendments and plans of subdivision is vested by the statute in the first instance in the Minister of Municipal Affairs. However, the Minister may, and in certain cases shall, refer the application for approval to be decided by this Board. While not required by statute so to do, the Board invariably holds a public hearing on notice to all those believed to have an interest in the subject matter.

By-laws authorized by Section 35 of The Planning Act, referred to in the statute as restricted area by-laws and commonly referred to as zoning by-laws, are perhaps more properly called land use control by-laws. Because this term is cumbersome and the term zoning by-law is so convenient this latter reference is rapidly assuming a status through general acceptance. Study should be given to incorporating this description into the statute with an appropriate definition.

The Board's whole practice and administration of this jurisdiction under The Planning Act are both oriented and geared to protect the individuals and minorities having the greatest interest, those in the immediate neighbourhood. The power to pass by-laws or refrain is vested by the statute in the local council. Both in law and in fact these elected

representatives are charged with the responsibility of serving the greatest common good of the whole community.

A procedure has been established by the Board whereby municipalities are requested to give notice of intention to apply to the Board for approval of any such by-law that has been passed. The notice required is one calculated best to bring the proposed publication to the notice of all those concerned. A specific period of time, usually fourteen days, is given for objections in writing to be delivered to the municipal clerk. A similar notice is sent to the Community Planning Branch of the Department of Municipal Affairs in order that the Board may receive an opinion from that Branch on planning and technical aspects of the by-law. If these opinions are critical they are made available for study and comment by those concerned.

If no objection is made approval is practically routine. If there are objections a hearing is held in the municipality on notice to land owners specially concerned and to all objectors.

At these hearings the Board determines first whether the measure proposed is a reasonable exercise of the discretion reposed in council by the Legislature. If the answer to that question is in the negative that is the end of the matter.

If, however, the answer is in the affirmative, the Board proceeds to inquire and determine whether any individual or minority right is unduly interfered with or invaded by the proposed measure. If the answer to that question is in the affirmative the Board declines to approve unless the measure is required in the public interest and there is no reasonable alternative to serve the public interest in an acceptable way. If the answer to this question is in the negative the Board proceeds to examine objections that the measure does not conform to good planning principles and concepts.

On this question the Board considers the evidence and submissions and will make findings. If these are in favour the proposed measure will be approved. If they are not and the measure before the Board has been proposed by the local council, the matter will be referred back to council with the Board's comments for further consideration.

But in the final analysis where only the public interest is concerned and the measure seems a reasonable exercise of the discretion vested in council by the Legislature, the Board will defer to the judgment or decision of the local elected representatives.

		1971	1970	1969
1:	Applications for approval of restricted area by-laws	1607	1527	1749
2:	Applications for approval of plans of redevelopment	11	3	2
3:	Applications for approval of proposed plans of subdivision	8	10	6
4:	Applications for approval of official plan amendments	38	36	37
5:	Appeals to Board for a direction that a restricted area by-law be amended by Council	87	80	62
6:	Appeals from committees of adjustment	976	789	292

SECTION 4

Assessment Appeals

During the year 1970 assessment appeals were made to the Board under the several statutes as follows:

The Assessment Act	267
The Conservation Authorities Act	34
The Local Improvement Act	3
The Highway Improvement Act	11
The Municipal Act	5
Other	18
	338

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PART VI

REVENUE

In compliance with the requirement of Section 99 of The Ontario Municipal Board Act the Board has adopted a tariff of fees payable on various types of applications and orders.

The following table sets forth the fees received by the Board and transferred to the Treasurer of Ontario for the fiscal year ending March 31, 1971, and the preceding six years. In conformity with the present system of provincial accounting this table is given for the fiscal year, in contrast to other statistics contained in this report which are made for the calendar year ending December 31, 1971.

Fiscal Year	Amount
1964-65	$ 308,066.04
1965-66	442,623.27
1966-67	578,484.00
1967-68	611,815.82
1968-69	563,956.95
1969-70	493,142.11
1970-71	515,709.01

The revenues of the Board for the calendar year 1971 amounted to $452,308.16, down from $489,151.81 in the calendar year 1970. This was due to a reduction in the total amount of capital expenditures approved.

All of which is respectfully submitted.

J. A. KENNEDY
CHAIRMAN

K. C. ANDREWS
SECRETARY

This is SCHEDULE "A" to the 66TH ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1971, made to

THE HONOURABLE THE ATTORNEY GENERAL

Orders Granting Annexations - 1971

Date of Order			Effective Date	Area-Acres
June 30, 1971	To :	KINGSTON, City of		
	From:	Kingston, Township	Aug. 1, 1971	33.392
July 29, 1971	To :	GALT, City of		
	From:	North Dumfries, Township	Sept. 1, 1971	67.000
Oct. 21, 1971	To :	GUELPH, City of		
	From:	Guelph, Township	Jan. 1, 1972	51.340
Aug. 6, 1969	To :	PETERBOROUGH, City of		
	From:	North Monaghan, Township	Jan. 1, 1971	115.700
Jan. 11, 1971	To :	LONDON, City of		
	From:	Westminster, Township	March 1, 1971	58.000
Dec. 22, 1970	To :	HANOVER, Town of		
	From:	Brant, Township	Feb. 1, 1971	16.000
Mar. 9, 1970	To :	WINCHESTER, Village of		
	From:	Winchester, Township	May 1, 1970	11.960
Aug. 24, 1970	To :	HEARST, Town of		
	From:	Way, Township	Jan. 1, 1971	350.000
Aug. 11, 1969	To :	SOUTHAMPTON, Town of		
	From:	Saugeen, Township	Jan. 1, 1970	50.000
Mar. 10, 1971	To :	OWEN SOUND, City of		
	From:	Sydenham, Township	Apr. 15, 1971	8.500
Mar. 10, 1971	To :	OWEN SOUND, City of		
	From:	Sydenham, Township	Apr. 15, 1971	20.000
Aug. 19, 1971	To :	WALKERTON, Town of		
	From:	Brant, Township	Oct. 1, 1971	30.320
June 30, 1971	To :	KINGSTON, Township of		
	From:	Kingston, City	Aug. 1, 1971	41.422
Apr. 26, 1971	To :	BLENHEIM, Town of		
	From:	Harwich, Township	June 1, 1971	1.545
Oct. 25, 1971	To :	SIMCOE, Town of		
	From:	Woodhouse, Township	Jan. 1, 1972	276.000

Orders Granting Amalgamations - 1971

Black River-Matheson, Township of -
Playfair, Township of — Jan. 1, 1972

Black River-Matheson, Township of -
Kingham, Improvement District — Jan. 1, 1972

Orders Granting Erections - 1971

To : KIRKLAND LAKE, Town of
From: Teck, Township

Orders Granting Redivision Into Wards

City of Kingston

This is SCHEDULE "B" to the 66TH ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1971, made to

THE HONOURABLE THE ATTORNEY GENERAL

Classification of Municipal Capital Expenditures approved during 1971

I - MUNICIPAL

		Amount Approved	1971	1970
(1)	General Government			
	Civic Buildings	$ 9,158,100.00	$ 9,158,100.00	$ 4,751,100.00
(2)	Protection to Persons and Property			
	Fire	4,405,792.96		
	Police	3,495,500.00		
	Street Lighting	766,339.18	8,667,632.14	17,579,513.36
(3)	Public Works			
	(a) Grade Separations	4,547,000.00		
	Streets, Roads, Lanes	68,764,109.40		
	Sidewalks	7,643,224.58		
	Bridges	22,138,528.29		
	Tunnels, Subways	600,000.00		
	Road Making Machinery	952,200.05		
	Conservation Projects	1,663,303.00		
	Workshops, Yards	1,102,100.00		
	Waterways, Harbour Developments	14,874.45	107,425,339.77	97,326,554.34
	(b) Watermains	15,892,973.29		
	Storm Sewers	97,120,361.37	113,013,334.66	66,974,454.40
(4)	Sanitation & Waste Removal			
	Sanitary Sewers	23,025,152.52		
	Sewage Treatment	29,413,873.44		
	Garbage	75,000.00		
	Waste Collection	517,000.00		
	Pollution	6,085,590.00		
	Comfort Stations	100,000.00		
	Health Clinics	1,105,300.00	60,321,915.96	49,948,663.90
(5)	Health			
	Hospitals	12,533,951.00	12,533,951.00	4,977,006.00
(6)	Social Welfare			
	Home for Aged	5,389,900.00	5,389,900.00	26,387,050.00
(7)	Recreation Services			
	Amusement Parks	3,962,253.00		
	Golf Courses	281,000.00		
	Skating Rinks	5,015,472.56		
	Swimming Pools	2,453,090.00		
	Community Centres	8,107,050.00	19,818,865.56	21,075,830.50
(8)	Community Services			
	Exhibitions, Fairs	925,000.00		
	Libraries	9,377,012.00		
	Housing	4,378,000.00	14,680,012.00	15,804,450.00
	Total General Government		$351,009,051.09	$304,824,622.50

II - EDUCATION			
Elementary Schools	$ 69,834,250.60		
Secondary Schools	46,566,253.00	$116,400,503.60	$268,903,430.33
III - UTILITIES			
Telephone	925,000.00		
Electricity	4,878,494.32		
Waterworks	18,901,750.15		
Transportation	1,664,900.00		
Acquisition of Lands	6,373,942.77		
Others: parking included	9,312,894.00		
Water Pollution	50,000.00	42,106,981.24	78,572,424.06

S U M M A R Y

General Government	$351,009,051.09	$304,824,622.50
Education	116,400,503.60	268,903,430.33
Utilities	42,106,981.24	78,572,424.06
	$509,516,535.93	$652,300,476.89